

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT DOUGAL,

Plaintiff,

-v-

1:23-CV-1167

ERIC LEWICKI *et al.*,

Defendants.

APPEARANCES:

ROBERT DOUGAL
Plaintiff, Pro Se
294 Wilbur Road
Schuylerville, NY 12871

OF COUNSEL:

DAVID N. HURD
United States District Judge

ORDER ON REPORT & RECOMMENDATION

On September 12, 2023, *pro se* plaintiff Robert Dougal (“plaintiff”) filed this action alleging that the named defendants violated his civil rights during an incident that happened on January 25, 2017 and, along with a series of other related events, ultimately led to his state-court conviction on certain criminal charges. Dkt. No. 1. Along with his complaint, plaintiff sought leave to proceed *in forma pauperis* (“IFP Application”). Dkt. No. 2.

On October 3, 2023, U.S. Magistrate Judge Christian F. Hummel granted plaintiff's IFP Application and advised by Report & Recommendation ("R&R") that plaintiff's complaint be dismissed with partial leave to replead. Dkt. No. 3. As Judge Hummel explained, plaintiff's claims against certain defendants were barred by various immunity or preclusion principles and were therefore subject to dismissal *without* leave to replead. *Id.* However, Judge Hummel concluded that plaintiff might be able to plead one or more plausible claims for relief against certain other defendants and therefore those claims were subject to dismissal *with* leave to amend them. *Id.*

Plaintiff has filed objections, Dkt. No. 5, and moved for the appointment of counsel to assist him, Dkt. Nos. 4, 6. Broadly stated, plaintiff faults Judge Hummel's R&R for leaving out "important points" related to the historical facts and other factors that support his claims. Dkt. No. 5. But as plaintiff himself acknowledges, his current pleading is "very detailed," and it is therefore "difficult to keep track of all the events that occurred in one or several readings." *Id.*

Upon *de novo* review of plaintiff's objections, the R&R is accepted and will be adopted in all respects. *See* 28 U.S.C. § 636(b)(1)(C). Although the Court is sympathetic to plaintiff's thorough recitation of the facts of his case as stated in his written objections, a review of Judge Hummel's R&R confirms

that he correctly applied binding legal precedent about certain immunity principles and preclusion or limitation rules.

Plaintiff is advised that he now has an opportunity to try to replead certain of his claims by filing an amended complaint in accordance with the guidance set forth in Judge Hummel's R&R. Among other things, any new pleading should clearly and succinctly set forth the material historical facts related to each of his timely claims against each remaining defendant.

Therefore, it is

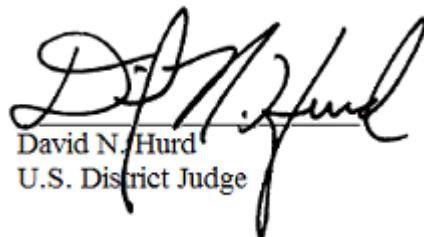
ORDERED that

1. The Report & Recommendation is ACCEPTED;
2. Plaintiff's complaint as alleged against Michelle Granger, Karen Heggen, Rachael Phelan, Anna Besson, Daniel Waldron, Charles Sherman, John McCarron, and Lee Kindlon is DISMISSED with prejudice and without leave to amend;
3. Plaintiff's claims as alleged against Saratoga County, Eric Lewicki, Christopher Martin, Nick Dziamba, Michael Zurlo, C.J. Brownell, Brent Dupras, John Carey, and William Brady is DISMISSED without prejudice and with leave to amend;
4. The Court DEFERS decision on plaintiff's motion for the appointment of counsel to assist him and directs that this motion be REFERRED to Judge Hummel for consideration in the event that plaintiff amends his pleading;

5. Plaintiff shall have thirty days in which to amend his pleading;
6. If plaintiff files an amended complaint within the thirty-day deadline, the pleading shall be returned to Judge Hummel for an initial review; and
7. If plaintiff does not file an amended complaint within the thirty-day deadline, the Clerk is directed to enter a judgment dismissing this action without further order of the Court.

IT IS SO ORDERED.

Dated: October 25, 2023
Utica, New York.



David N. Hurd
U.S. District Judge